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that the burden of proving payment of the note sued upon rested upon the defendants held not erroneous as relieving plaintiff of the burden resting on him, defendants having pleaded payment.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 737.]

**9. Payment (§ 74 (4)\*)—Receipt—Note—Affidavit as to Genuineness.**—A receipt is not prima facie evidence of payment of note, where the genuineness of the receipt is denied by affidavit.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 77, et seq.]

Error to Law and Chancery Court of City of Norfolk.

Suit by Mary E. Philips, executrix of W. H. Philips, deceased, against M. L. Keister and another, executors of Z. E. Keister, deceased. From a judgment for plaintiff, defendants bring error. Affirmed.

*E. R. F. Wells*, of Norfolk, for plaintiffs in error.

*Edward R. Baird, Jr.*, of Norfolk, for defendant in error.

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SMITH *v.* HOLLAND et al.

March 13, 1919.

[98 S. E. 676.]

**1. Exemptions (§ 119 (1)\*)—Time for Making Claim—"Subjected."**—Where a creditor levied execution against property and other creditors entered into the controversy claiming prior liens, and there was a decree settling the priorities, which became final at adjournment of term of court, the property was "subjected" under a decree within meaning of Code 1904, § 3642, and judgment debtor could not set apart his homestead.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Subject. For other cases, see 7 Va.-W. Va. Enc. Dig. 95.]

**2. Exemptions (§ 119 (1)\*)—Time for Making Claim.**—Where execution was levied against judgment debtor's property and other creditors entered into controversy which lasted for some time, and a decree was entered disposing of the property between the creditors, the decree which became final after adjournment of term of court, precluded judgment debtor from thereafter setting apart his homestead.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 95.]

**3. Judgment (§ 713 (2)\*)—Res Judicata—Matters That Might Have Been Litigated.**—The effect of a final decree is not only to con-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

clude parties as to every question actually raised and decided, but every claim which properly belonged to subject of litigation which parties in exercise of reasonable diligence might have raised at time.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 364-6.]

**4. Judgment (§ 650\*)—Conclusiveness—Final Judgment.**—A decree is final so as to conclude parties as to issues decided, where no further action is necessary except such as might be used to enforce the decree.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 183-6.]

Appeal from Circuit Court, Northampton County.

Suits by Clarence W. Holland against William G. Smith, and by the latter and others against the former, which were heard together. From a decree refusing to grant his petition, praying that certain moneys be paid over to him as a part of his homestead exemption, William G. Smith appeals. Affirmed.

*J. Brooks Mapp*, of Accomak, for appellant.

*Stanley Scott*, of Eastville, and *Jas. E. Heth*, of Norfolk, for appellees.

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BERNARD-SMITH CO. et al. v. BERNARD.

March 13, 1919.

[98 S. E. 677.]

**1. Appeal and Error (§ 843 (2)\*)—Review—Matters Not Affecting Merits.**—Where, under undisputed facts, defendants clearly failed to establish their defense so that plaintiff was entitled to recover in any event, defendant's criticisms of instructions given at plaintiff's request need not be considered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600-2.]

**2 Corporations (§ 121 (5)\*)—Misrepresentation in Procurement—Evidence.**—In action on note drawn by corporation, indorsed by stockholders, and given to manager as part consideration for his stock, in which defendants set up misrepresentation and failure of consideration, a defense under Negotiable Instruments Law, § 28, evidence held insufficient to show that defendants were misled to their damage by statement made by manager at annual meeting as to resources and liabilities of corporation.

Error to Circuit Court of City of Lynchburg.

Proceedings by S. M. Bernard against the Bernard-Smith Com-

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